

**Offshore Express, Inc.<sup>1</sup> and McAllister Bros., Inc.  
and International Organization of Masters,  
Mates & Pilots, AFL-CIO, Petitioner. Case  
15-RC-6954 (formerly 2-RC-19444)**

24 August 1983

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
JENKINS AND HUNTER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer John H. Curley. Subsequently, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 15 transferred this proceeding to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board which have been duly considered.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds that, for the reasons stated below, it will not effectuate the policies of the Act to assert jurisdiction over the Employer.

The Employer, a Louisiana corporation with an office and place of business in Houma, Louisiana, is

<sup>1</sup> The Petitioner contends that McAllister Bros., Inc., and its wholly owned subsidiary, Offshore Express, Inc., are sufficiently integrated such that they constitute a single employer within the meaning of the Act. Offshore Express, Inc., contends, however, that it operates independently of McAllister Bros., Inc., and that its parent company therefore is not a proper party to this proceeding.

In determining whether sufficient integration exists between two enterprises to warrant a finding of a single-employer status, the Board weighs the following principal factors: (1) interrelation of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership or financial control. See *Stoll Industries*, 223 NLRB 51, 53-54 (1976). Here, the record evidence fails to establish the presence of any but the last of these four factors.

Superintendent Earl D. Carmichael, in charge of operations for Offshore Express in Diego Garcia, testified without contradiction that there is no interchange of supervision or employees between the two companies. According to Carmichael, decisions on labor relations matters for Offshore Express are made by that company's vice president, Bob Schmidt. He further testified that McAllister Bros. has no input into work rules applicable to the employees of Offshore Express, and that nobody in that company has authority either to discipline, or to direct, these employees. Carmichael also testified that the two companies do not have integrated operations. The only indication in the record to the contrary comes from counsel for the Petitioner's questions to Carmichael on cross-examination, suggesting that the two companies have in common certain officers and loans. Thus, based on the foregoing and the record as a whole, we find that Offshore Express, Inc. and McAllister Bros., Inc., do not constitute a single employer, and that Offshore Express, Inc., is the sole employer of the employees involved herein.

engaged in the offshore boat service industry. At the hearing, the parties stipulated that, during the past 12 months, a representative period, the Employer purchased and received in the State of Louisiana goods valued in excess of \$50,000 from points located outside the State.

Pursuant to a contract with the United States Navy, the Employer provides crew boat service and operates two Navy-owned tugboats in the lagoon at Diego Garcia in the British Indian Ocean Territory.<sup>2</sup> On various vessels operating exclusively in the territorial waters of Diego Garcia, the Employer employs approximately 37 employees, whom the Petitioner seeks to represent.<sup>3</sup> The Employer contends that the Board lacks jurisdiction in this case because all the employees in the petitioned-for unit live and work outside the territorial boundaries of the United States. The Petitioner, on the other hand, contends that the Board has jurisdiction because the vessels on which the employees work, as well as the one on which they live, are all United States flag vessels which, for legal purposes, are United States territories.<sup>4</sup>

In *Facilities Management Corporation*, 202 NLRB 1144 (1973), the employer furnished maintenance, repair, and support services for the United States Air Force at Wake Island. The Board assumed, for decisional purposes, that it had statutory jurisdiction over employers operating on Wake Island, but declined, on discretionary grounds, to assert it. Wake Island, the Board observed, is a small, remote Pacific Ocean island, difficult of access, with no permanent residents, and nothing but a military installation located there. Taking these factors into consideration, the Board concluded that it would not effectuate the purposes of the Act to assert jurisdiction.<sup>5</sup>

The instant case provides a similar, though not altogether identical, framework for consideration of the various jurisdictional issues involved. The

<sup>2</sup> The term of the contract is 2 years, extendable at the Government's option for three additional 1-year periods.

<sup>3</sup> The employees work on four launches ferrying passengers between the shoreside U.S. Naval facility and the merchant marine vessels in the lagoon, on two tug boats assisting in docking and undocking vessels, and on one support vessel, which remains anchored in the lagoon.

<sup>4</sup> The Petitioner cites *Alcoa Marine Corp.*, 240 NLRB 1265 (1979), in support of its contention. See *infra* fn. 12.

<sup>5</sup> Cf. *Champlain Security Services*, 243 NLRB 755 (1979), wherein the Board asserted jurisdiction over an employer who provided security services for the United States Coast Guard at its installation on Governors Island, located at the southern tip of Manhattan Island, New York. In rejecting the employer's argument that *Facilities Management* should be controlling, because it too performed services for the U.S. Government on a federally owned island, the Board pointed out that the two cases were distinguishable. The Board reiterated the factors which led to the decision to decline jurisdiction in *Facilities Management*, and observed that Wake Island in the Pacific Ocean and Governors Island in New York Bay had rather obvious differences in terms of accessibility and population.

Employer in the instant case, like the employer in *Facilities Management*, is a private contractor supplying services to the United States military on a remote ocean island. Here, however, the operation is not a land-based one on an island owned by the United States Government but, rather, a local maritime operation functioning primarily in the inland waters of an island territory, which is under the sovereign jurisdiction of a foreign nation.

Diego Garcia, in the Indian Ocean, is the largest of several small atolls in the Chagos Archipelago, which together form the British Indian Ocean Territory.<sup>6</sup> In 1966, the governments of the United States and the United Kingdom entered into an Executive Agreement concerning the availability of the British Indian Ocean Territory for the defense purposes of both governments.<sup>7</sup> It was expressly agreed that the territory would remain under United Kingdom sovereignty. In 1972, the two governments agreed to the establishment of a limited United States naval communications facility of Diego Garcia<sup>8</sup> and, in 1976, further agreed to the development of the facility into a support facility of the United States Navy.<sup>9</sup>

The record shows that access to Diego Garcia is extremely restricted. Neither commercial airline nor passenger ship service is available. Military transportation provides the only regular means of entry and departure. Furthermore, the Executive Agreement of 1976 between the United States and the United Kingdom<sup>10</sup> places specific restrictions on access. Paragraph (4) of the Executive Agreement entitled "Access to Diego Garcia" provides:

(a) Access to Diego Garcia shall in general be restricted to members of the Forces of the United Kingdom and of the United States, the

Commissioner and public officers in the service of the British Indian Ocean Territory, representatives of the Governments of the United Kingdom and of the United States and, subject to normal immigration requirements, contractor personnel. The Government of the United Kingdom reserves the right, after consultation with the appropriate United States administrative authorities, to grant access to members of scientific parties wishing to carry out research on Diego Garcia and its environs, provided that such research does not unreasonably interfere with the activities of the facility. The Commanding Officer shall afford appropriate assistance to members of these parties to the extent feasible and on a reimbursable basis. Access shall not be granted to any other person without prior consultation between the appropriate administrative authorities of the two Governments.

(b) Ships and aircraft owned or operated by or on behalf of either Government may freely use the anchorage and airfield.

(c) Pursuant to the provisions of the second sentence of paragraph (3) of the BIOT Agreement, ships and aircraft owned or operated by or on behalf of a third government, and the personnel of such ships and aircraft, may use only such of the services provided by the facility, and on such terms, as may be agreed in any particular case by the two Governments.<sup>11</sup>

Thus, in sum, what the record reveals is an employer engaged in a maritime service operation for the U.S. Navy in the lagoon at Diego Garcia, a distant and remote island territory under foreign sovereign jurisdiction, which the United States and the United Kingdom by express written agreement have dedicated to the defense purposes of both nations. The Employer's vessels do not engage in international trade. Nor do they have occasion to visit foreign ports. Rather, the record shows that, for the duration of its agreement with the U.S. Navy, the Employer's vessels will operate exclusively in the territorial waters of Diego Garcia.

<sup>6</sup> The total land area of the British Indian Ocean Territory is about 31 square miles. Diego Garcia itself occupies an area of about 11 square miles, and is located about 100 miles southeast of the main group of islands about 350 miles south of the Maldives Islands.

<sup>7</sup> Agreement on Availability of Certain Indian Ocean Islands for Defense Purposes, December 30, 1966, United States-United Kingdom, 18 U.S.T. 28, T.I.A.S. No. 6196, as amended, June 22-25, 1976, 27 U.S.T. 3448, T.I.A.S. No. 8376.

<sup>8</sup> Agreement on Limited U.S. Naval Communications Facility on Diego Garcia, British Indian Ocean Territory, October 24, 1972, United States-United Kingdom, 23 U.S.T. 3087, T.I.A.S. No. 7481.

<sup>9</sup> Agreement on U.S. Naval Support Facility on Diego Garcia, British Indian Ocean Territory, February 25, 1976, United States-United Kingdom, 27 U.S.T. 316, T.I.A.S. No. 8230.

<sup>10</sup> *Id.*

<sup>11</sup> 27 U.S.T. at 318.

Assuming, *arguendo*, as the Petitioner contends, that the Board has statutory jurisdiction in this case because the Employer's Diego Garcia operation involves only United States flag vessels, we nevertheless conclude, based on the factors set forth above, that it would not effectuate the policies of the Act to assert jurisdiction herein.<sup>12</sup> Accordingly, we shall dismiss the petition.

<sup>12</sup> *Facilities Management Corp.*, *supra*.

In *Alcoa Marine Corp.*, 240 NLRB 1265, the Board asserted jurisdiction over an employer operating an oceangoing United States flag vessel, which was engaged in offshore drilling and exploration on Brazil's continental shelf pursuant to a contract with the national petroleum company of Brazil. Despite evidence that the ship's technology was no longer needed in the United States, and was therefore likely to remain outside United States territorial waters indefinitely and possibly permanently, the Board asserted jurisdiction on the ground that United States flagships,

## ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

wherever they are, constitute *de jure* United States territories to which United States labor and other laws apply.

The Petitioner contends that, inasmuch as the vessels in the instant case are American flag vessels and the employees operating these vessels are American citizens, under *Alcoa Marine*, the Board must assert jurisdiction herein. The issue in that case, however, was whether the Board had statutory jurisdiction, whereas here the issue is whether the existence of certain factors warrants the exercise of our discretionary authority to refuse to assert jurisdiction, assuming, *arguendo*, that such jurisdiction exists. In *Alcoa Marine*, the Board was concerned with an area of the world which differed markedly in numerous respects, including population and accessibility, from Wake Island, the focus of the Board's attention in *Facilities Management*. Thus, the Board in *Alcoa Marine* did not consider whether to refuse jurisdiction on the basis of *Facilities Management*, making the case plainly inapposite as to the discretionary jurisdictional issue herein.